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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/477,572	01/04/2000	PAUL DAVID MOONEY JR.	99-156	9431

22206 7590 11/16/2004

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EXAMINER

MENDEZ, MANUEL A

ART UNIT	PAPER NUMBER
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3763

DATE MAILED: 11/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Application No.

09/477,572

<b>Applicant(s)</b>
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MOONEY, PAUL DAVID

**Examiner**

Manuel Mendez

Art Unit	
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3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,5-8 and 10-21 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,5-8 and 10-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1, 5-8, and 19-21** are rejected under 35 U.S.C. 103(a) as being unpatentable over Feller, Jr. et al., in view of (1) Wenstrom, Jr., (2) Hildwein, et al., (3) Wellner, et al., (4) Termanian, or (4) Bedi, et al. The Feller, Jr. et al. Patent discloses a body including an interface and a cannula; the cannula extending into and terminating in a vessel; a body for at least partial insertion into the bodily tissue at a point of insertion; the interface being the portion of the body which remains in contact with the bodily tissue adjacent the point of insertion while the device remains inserted in the bodily tissue. The Feller, Jr. et al. Patent does not disclose texture on the interface. However, the use of texture on interfaces is conventional in the art as evidenced by the teachings of (1) Wenstrom, Jr., (2) Hildwein, et al., (3) Wellner, et al., (4) Termanian, or (4) Bedi, et al. The above patents disclose various types of textures used to secure the insertion apparatus to the surrounding tissue, ensuring the stability of the apparatus while conducting surgical procedures. Accordingly, for a person of ordinary skill in the art, enhancing the Feller, Jr. et al. Patent with texture to prevent migration from the point of entry would have been considered an obvious design alternative.

**Claims 10-18** are rejected under 35 U.S.C. 103(a) as being unpatentable over Feller, Jr. et al., in view of (1) Hildebrandt, (2) Hunt et al., (3) Bedi et al., (4) Ternamian, (5) Wenstrom, Jr., (6) Ciaglia et al., (7) Ju, or (8) O'Connor et al. The Feller, Jr. et al. Patent discloses a stent portion, the stent portion capable of receiving a needle therethrough, the stent portion including an introducer and a cannula through which the needle extends, the introducer including a distal portion and a proximal portion, a segment of the proximal portion for contact with the bodily tissue at the point of insertion. Importantly, the Feller, Jr. et al. Patent does not expressly disclose texture comprising of rounded bumps, pointed bumps, and static texture. However, the use of texture comprising rounded bumps, pointed bumps, and static texture is conventional as demonstrated in the teachings and figures of (1) Hildebrandt, (2) Hunt et al., (3) Bedi et al., (4) Ternamian, (5) Wenstrom, Jr., (6) Ciaglia et al., (7) Ju, and (8) O'Connor et al. Accordingly, in view of the conventionality of the use of texture, it would have been obvious to modify the cannula structure of the Feller, Jr., et al. Patent, to include the texture enhancements. Conclusively, the use of texture comprising rounded bumps, pointed bumps, and static texture, would have been considered obvious design alternatives by a person of ordinary skill in the art.

### ***Response to Arguments***

Applicant's arguments filed August 10, 2004 have been fully considered but they are not persuasive. The applicant argues that the prior art lacks the required motivation for a person of ordinary skill in the art to make design alternatives. Specifically, the applicant argues that because the prior art is used to ensure the stability of the

apparatus while conducting surgical procedures and not for the infusion of fluids, there is a lack of motivation to combine the references in the pending rejections.

In response to applicants' arguments, the cited references in the rejections in question disclose the structural elements in the pending claims of record. Importantly, "a recitation with respect to the manner in which an apparatus is intended be employed does not impose any structural limitation upon the claimed apparatus which differentiates it from a prior art reference disclosing the structural limitations of the claim". In re Peterson, 494 F.2d 1399, 181 USPQ 641 (CCPA 1974). Therefore, since an intended use cannot be considered a structural limitation, the examiner of record concludes that the rejections are proper and shall stand.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Art Unit: 3763

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Manuel Mendez whose telephone number is 703-308-2221. The examiner can normally be reached on 0730-1800 hrs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Brian Casler can be reached on 703-308-3552. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Manuel Mendez  
Primary Examiner  
Art Unit 3763

MM